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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/151,764	09/11/98	DOWLING	A-6388

MM42/0229

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EXAMINER

LEE, M

ART UNIT PAPER NUMBER

2876

DATE MAILED: 02/29/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-41 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-41 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

Part III DETAILED ACTION

Election/Restriction

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2 1. This application contains claims directed to the following patentably distinct species of the claimed
3 invention:

4 Group I: **Figure(s) not shown**, drawn to a specific structural limitation of an optical symbology
5 imager comprising, among other things, an active area of the two dimensional photodetector shifting out the
6 image data serially, and **storing a central portion of the image data in a memory** in the control device for
7 processing thereafter.

8 Group II: **Figure(s) not shown**, drawn to the specific of an optical symbology imager comprising,
9 among other things, two dimensional sensor receiving image data for each of the multiple illumination
10 conditions, the **control device calculating edge totals for each image data received by the two**
11 **dimensional photodetector** comparing the edge totals and utilizing a largest of the edge totals as an
12 indicator of the optimum illumination.

13 Group III: **Figures 5a-5c**, drawn to a specific structural limitation of an optical symbology imager
14 comprising, among other things, a focusing apparatus including a **focusing disk with multiple optical**
15 **positions to provide different focal lengths**, the disk being rotatable so that each of the multiple optical
16 positions can move into an optical path of the imager, etc.

17 Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the
18 merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no
19 claim appears generic.

20 Applicant is advised that a response to this requirement must include an identification of the species
21 that is elected consonant with this requirement, and a listing of all claims readable thereon, including any
22 claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered
23 nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Michael G. Lee** whose telephone number is **(703) 305-3503**. The examiner can normally be reached between the hours of 6:30AM to 4:00PM Monday thru Thursday and every other Friday (first Friday of the bi-week).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald T. Hajec, can be reached on (703) 308-4075. The fax phone number for this Group is (703)308-7722, (703)308-7724, or (703)308-7382.

1 Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132
2 or which otherwise require a signature, may be used by the applicant and should be addressed to
3 [michael.lee@uspto.gov].

4 *All Internet e-mail communications will be made of record in the application file. PTO employees*
5 *do not engage in Internet communications where there exists a possibility that sensitive information could*
6 *be identified or exchanged unless the record includes a properly signed express waiver of the*
7 *confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage*
8 *Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG*
9 *89.*

10 Any inquiry of a general nature or relating to the status of this application or proceeding should be
11 directed to the Group receptionist whose telephone number is (703) 308-0956.

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MICHAEL G. LEE
Primary Examiner

Technology Center 2800
FEBRUARY 29, 2000